



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	November 5, 2019
SUBJECT/REPORT NO:	City Initiative 19-H – Modifications to Zoning By-law Nos. 6593 and 05-200 – Lands on the west side (bay side) of Beach Boulevard (PED19190) (Ward 5)
WARD(S) AFFECTED:	Ward 5
PREPARED BY:	Joanne Hickey Evans (905) 546-2424 Ext. 1282
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That **City Initiative 19-H** to further amend the “C/S-1436” (Urban Protected Residential, etc.) District and “G/S-1436” (Neighbourhood Shopping Centre, etc) District, modified, of Zoning By-law No. 6593, to increase the minimum ground floor elevation to 76.5 metres from 76.0 metres above mean sea level and to update technical references to the regulations and Schedules of By-law No. 99-170, for lands on the west side (bay side) of Beach Boulevard, in the former City of Hamilton, as shown on Appendix “A”, to Report PED19190, be **APPROVED** on the following basis:
 - (i) That the draft By-law attached as Appendix “B” to Report PED19190, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
 - (ii) That the amending By-law, attached as Appendix “B” to Report PED19190, be added to District Maps Nos. E-80b, E-80c, E-80d, E-80e and E-80f of Zoning By-law No. 6593 as “C/S-1436b” (Urban Protected Residential, etc.) and “G/S-1436b” (Neighbourhood Shopping Centre, etc) Districts; and,

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- (iii) That the proposed change in zoning is consistent with the Provincial Policy Statement (2014), conforms with A Place to Grow Plan (2019) and complies with the Urban Hamilton Official Plan.

- (b) That **City Initiative 19-H** to amend Zoning By-law No. 05-200 to add a site-specific exception to the Neighbourhood Commercial (C2) Zone to require a minimum building elevation of 76.5 metre above mean sea level, greater side yard setbacks and accessory building regulations, for the properties located at Nos. 328, 336, 344 (part), 400, 532, 536, and 538 Beach Boulevard, in the former City of Hamilton, as shown on Appendix “A” to Report PED19190, be **APPROVED** on the following basis:
 - (i) That the draft By-law attached as Appendix “C” to Report PED19190, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council; and,
 - (ii) That the proposed change in zoning is consistent with the Provincial Policy Statement (2014), conforms with A Place to Grow Plan (2019) and complies with the Urban Hamilton Official Plan.

- (c) That the City Solicitor be instructed to appeal and oppose any Committee of Adjustment approvals where the application was not supported by the Planning and/or Growth Management Divisions and the approval would permit a minimum ground floor elevation of less than 76.5 metres above mean sea level or a side yard less than the minimum required by the Zoning By-law, for lands on the west side (bay side) of Beach Boulevard for lands

EXECUTIVE SUMMARY

In 1999, Zoning By-law No. 6593 was amended, by By-laws Nos 99-169 and 19-170, to implement the findings of the Master Drainage Plan for the beach strip. The implementation measures contained special provisions to minimize drainage concerns and address the high water table in this area. The amendments included greater side yard setbacks and a prohibition on certain building projections and minimum ground floor fence heights. There was an additional regulation for properties on the west side of Beach Boulevard that required a minimum ground floor elevation of 76.0 metres above mean sea level (MSL) for buildings and additions over 14 square metres. The entire Beach strip was placed under Site Plan Control to address grading and drainage matters.

In 2017, the Hamilton Water Division undertook the Beach Boulevard Community Stormwater Ponding Study to investigate the cause of water ponding on the right-of-way (ROW) and to identify potential mitigation measures that could be implemented to minimize future ponding impacts. One of the implementation measures was to increase

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the ground floor elevation from 76.0 m above MSL to 76.5 metres. The Report was approved Public Works and Council, at their September 30 and October 9 meetings respectively.

This Report recommends changes to By-law No. 99-170 (properties on the west side of Beach Boulevard) of Zoning By-law No. 6593 to increase the minimum ground floor elevation and incorporate some technical amendments (e.g. updated Site Plan control By-law number, remove properties that are within Zoning By-law No. 05-200).

In addition, some of the lands previously subject to By-law No. 99-170 are within Zoning By-law No. 05-200. The site specific requirements from By-law No. 99-170 were not carried forward. Staff are recommending the applicable regulations from By-law No. 99-170 be reinstated for these properties.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: As required by the *Planning Act*, Council shall hold at least one Public Meeting to consider an application for amendments to Zoning By-laws.

HISTORICAL BACKGROUND

1.0 By-law Nos. 98-282,-99-169, and 99-170

In January 20, 1999, the Planning and Development Committee approved the Terms of Reference for the Master Drainage Plan for the Hamilton Beach Strip. There were two objectives of the Plan:

- a) To develop a comprehensive lot drainage master plan to provide a framework for lot grading for individual lots which is to be functional on an interim and ultimate basis; and,
- b) To recommend a cost-effective solution to eliminate/reduce the water on local streets resulting from periodic flooding.

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As a result of this study, two actions were taken for properties on both the east and west sides of Beach Boulevard:

1. Amend Zoning By-law No. 6593 (By-law Nos. 99-169 and 99-170):
 - to increase side yard setbacks (both sides);
 - to prohibit building projections into the side yards (both sides);
 - to establish a minimum ground floor elevation of 76.0 metres above mean sea level except for accessory buildings and additions less than 14 square metres;
 - to prohibit cellars and basements (west side only);
 - to require additions less than 14 square metres to have a minimum floor elevation at or above the existing ground floor elevation (west side only); and,
 - to require a gap between the ground and the bottom of the fence (both sides).
2. Require the entire Beach strip to be placed under site plan control (By-law No. 98-282).

2.0 Zoning By-law No. 05-200

As part of the development of the new comprehensive Zoning By-law No. 05-200, several properties on the Beach strip are now in Zoning By-law No. 05-200.

There are seven properties (328, 336 Beach Boulevard; Part of 344 Beach Boulevard; 400 Beach Boulevard; and 532, 536, 538 Beach Boulevard) on the west side of the Beach Boulevard that are zoned Neighbourhood Commercial (C2) Zone. The previous restrictions from By-law 99-170 were excluded inadvertently.

3.0 Beach Boulevard Community Stormwater Ponding Study

The City of Hamilton (City) has experienced extremely high Lake Ontario water levels in 2017, and again in 2019. The high water levels are likely the result of extreme precipitation due to climate change. There was also an alteration to the International Joint Commission (IJC) water level management strategy which may be having an impact on the water level in Lake Ontario.

The Beach Boulevard community has been severely impacted by ponding water on City ROW and on private property. In 2017, the Hamilton Water Division undertook the Beach Boulevard Community Stormwater Ponding Study to investigate the cause of water ponding on the ROW and potential mitigation measures that could be implemented to minimize future ponding impacts. Dillon Consulting Limited (Dillon) was retained by the City to conduct the study and the associated 2-D modelling

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The current the International Joint Commission (IJC) which governs the Lake Ontario water levels allows the level of Lake Ontario to reach a maximum of 75.73 under plan 2014.

4.0 Public Works Committee/Council Meeting – September 30 and October 9, 2019

On September 30, 2019, the Public Works Committee and October 9, 2019 Council endorsed this study and recommended staff proceed with certain operational and infrastructure upgrades. In addition, staff were directed amend the existing Zoning By-law No. 6593 to increase the mean seal level from 76.0 metres to 76.5 metres for new buildings and to incorporate this same restriction for the commercially zoned properties in Zoning By-law No. 05-200.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

1.0 Growth Plan for the Greater Golden Horseshoe (2019)

There are no policies relating to local natural hazards. Therefore, the Zoning By-law amendments do not conflict with the Growth Plan for the Greater Golden Horseshoe (2019)

2.0 Provincial Policy Statement (PPS) 2014

Although there are no specific policies relating to local hazards (flooding, high water table), Section 3.1 – Natural Hazards aims to protect public health and safety from provincially defined natural hazards.

Further, Policy 1.6..6.7 c) states that “Planning for stormwater management shall not increase risks to human health or safety.”

The Zoning By-law amendments do not conflict with the PPS.

3.0 Urban Hamilton Official Plan

Policy B.3.6.5.14 of Volume 1 applies:

“B.3.6.5.14 Where lands with inherent hazards exist that are not regulated by the Province or a provincial body, such as steep slopes not associated with a watercourse or shoreline, the City shall as part of applications for development under the Planning Act, R.S.O., 1990 c. P.13, require the preparation of appropriate studies to:

- a) map the hazard;

- b) assess the existing and future stability of the hazard;
- c) identify appropriate setbacks from the hazard; and,
- d) identify other mitigation measures necessary to protect the site, the hazard, *adjacent lands*, and public safety.“

The Zoning By-law amendments implement this policy.

RELEVANT CONSULTATION

- Hamilton Water Division, Public Works Department

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

1.0 By-law No. 99-170

By-law 99-170 established a number of requirements for properties on the west side (bay side) of Beach Boulevard. They included:

- increasing side yard setbacks and limitations on projections permitted in the side yards;
- establishing a minimum ground floor elevation of 76.0 metres above mean sea level except for accessory buildings and additions less than 14 square metres;
- prohibiting cellars and basements (including crawl spaces);
- requiring additions less than 14 square metres to have a minimum floor elevation at or above the existing ground floor elevation; and,
- requiring a minimum fence height from the ground to the bottom of the fence of 0.75 metres.

2.0 Changes to By-law No. 99-170

One of the recommendations of the 2019 Beach Boulevard Community Stormwater Ponding Study is to increase the minimum ground floor elevation by 0.5 metres to 76.5 metres above MSL, measured by the geodetic survey datum, for all buildings and structures, except for accessory buildings and additions less than 14 square metres.

In addition, there are some additional technical changes required to the by-law including:

- the replacement of 3 of the 4 Schedules to the By-law to identify the properties that are subject to By-law 99-170, as amended since a number of properties are within Zoning By-law No. 05-200; and,
- an update to the applicable site plan control by-law.

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2.1 Committee of Adjustment applications

Based on the City’s current records, between 2005 and the date of writing this report, there were 13 applications related to side yards, basements and the 76.0 MSL.

Variance (# of applications)	Staff recommendation	C of A decision		
		Approved	Tabled	Denied
Side yard reduction (5)	denial	1		
	approval	4		
Less than 76 m below MSL (10)	denial	5	2	2
	Approval (basement above 76 m MSL)	1		

Two of the 13 applications had variances to both the basement and the side yard.

Planning Staff recommend that staff from both the Planning Division and Hamilton Water, make a presentation to the Committee of Adjustment about the recent findings of the study and the importance of not varying the Zoning By-law requirements.

In addition, given the serious nature of this regulation, staff from Planning and Growth management are recommending that Legal Services be instructed to file an appeal and oppose any decision that permits a minimum ground floor elevation of less than 76.5 metres MSL or a side yard that is less than required by the Zoning By-law. Staff would attend the hearing to provide expert evidence as to why the Minor Variance(s) should be denied.

3.0 Zoning By-law No. 05-200

Since the passage of By-law No. 99-170, several properties with park or commercial uses were removed from Zoning By-law No. 6593 and added to Zoning By-law No. 05-200.

In 2017, the City introduced new commercial mixed-use zones for the urban area into Zoning By-law No. 05-200. Seven properties on the west side of Beach Boulevard are zoned Neighbourhood Commercial (C2) Zones. They are:

- 328, 336 Beach Boulevard;
- 344 (Part) Beach Boulevard;
- 400 Beach Boulevard; and,
- 532, 536, 538 Beach Boulevard.

Through this project, it was identified that site specific requirements from Zoning By-law No. 6593 were excluded inadvertently from these properties. As a result, a new special exception is required to ensure the previously established regulations are reinstated for these properties (see Appendix “C” to Report PED19190). The regulations:

- require a 1.7 metre side yard and limits projections/encroachments permitted in a side yard;
- require a minimum ground floor elevation of 76.5 metres above mean sea level for all buildings and structures, except for accessory buildings and additions less than 14 square metres;
- prohibit cellars and basements;
- allow additions less than 14 square metres to have a minimum floor elevation at or above the existing ground floor elevation; and,
- establish accessory structures regulations, including height, lot coverage, setbacks.

The accessory building regulations within Zoning By-law No. 05-200 are insufficient for this area and therefore, detailed regulations are required. The only regulation not included in this by-law was the minimum fence height since it only applied to certain residential properties.

ALTERNATIVES FOR CONSIDERATION

Council could retain the existing provisions of By-law No. 99-170 (Zoning By-law 6593) and not include any special regulations for the properties zoned Neighbourhood Commercial (C2) Zone in Zoning By-law No. 05-200.

Council could:

- not support staff’s recommendation to oppose Committee of Adjustment applications that have been approved with a ground floor elevation of less than 76.5 m. MSL or a side yard less than required by the Zoning By-law; or,
- require staff to present a report to Planning Committee to consider these applications on a case by case basis.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Location Map

Appendix “B” – Draft Amendment to Zoning By-law No. 6593

Appendix “C” – Draft Amendment to Zoning By-law No. 05-200

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